

# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Engrossed House Bill 1219 be amended to read as follows:

- 1       Page 1, between the enacting clause and line 1, begin a new
- 2       paragraph and insert:
- 3       "SECTION 1. IC 5-2-18 IS ADDED TO THE INDIANA CODE AS
- 4       A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 5       1, 2008]:
- 6       **Chapter 18. Citizenship and Immigration Status Information**
- 7       **Sec. 1. As used in this chapter, "governmental body" has the**
- 8       **meaning set forth in IC 5-22-2-13.**
- 9       **Sec. 2. A governmental body may not enact an ordinance, a**
- 10      **resolution, a rule, or a policy that prohibits or in any way restricts**
- 11      **another governmental body, including a law enforcement officer**
- 12      **(as defined in IC 5-2-1-2), a state or local official, or a state or local**
- 13      **government employee, from taking the following actions with**
- 14      **regard to information concerning the citizenship or immigration**
- 15      **status, lawful or unlawful, of an individual:**
- 16          **(1) Communicating or cooperating with federal officials.**
- 17          **(2) Sending to or receiving information from the United States**
- 18          **Department of Homeland Security.**
- 19          **(3) Maintaining information.**
- 20          **(4) Exchanging information with another federal, state, or**
- 21          **local government entity.**
- 22      **Sec. 3. If a governmental body violates this chapter, a person**
- 23      **lawfully domiciled in Indiana may bring an action to compel the**
- 24      **governmental body to comply with this chapter.**
- 25      SECTION 2. IC 10-11-2-21.5 IS ADDED TO THE INDIANA
- 26      CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 27      [EFFECTIVE JULY 1, 2008]: **Sec. 21.5. (a) As used in this section,**
- 28      **"law enforcement officer" means a:**
- 29          **(1) police employee;**
- 30          **(2) county sheriff;**
- 31          **(3) county police officer;**

- (4) county police reserve officer;
- (5) city police officer;
- (6) city police reserve officer;
- (7) town marshal;
- (8) deputy town marshal; or
- (9) member of a consolidated law enforcement department established under IC 36-3-1-5.1.

(b) The superintendent shall negotiate the terms of a memorandum of understanding between the state and the United States Department of Justice or the United States Department of Homeland Security concerning a pilot project for the enforcement of federal immigration and customs laws in Indiana.

(c) The memorandum of understanding described in subsection (b) must be signed on behalf of the state by the superintendent and governor, unless otherwise required by the United States Department of Justice or the United States Department of Homeland Security.

(d) The superintendent shall designate appropriate law enforcement officers to be trained under the memorandum of understanding described in subsection (b).

(e) The department shall apply for federal funding, as available, for the costs associated with training law enforcement officers under the memorandum of understanding described in subsection (b).

(f) A law enforcement officer certified as trained in accordance with the memorandum of understanding described in subsection (b) may enforce federal immigration and customs laws while performing within the scope of the law enforcement officer's duties.

(g) The superintendent shall coordinate efforts, as needed, with the executive director of the department of homeland security to address issues of national security in implementing this section.

SECTION 3. IC 22-4-14-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. (a) As used in this section, "SAVE program" means the Systematic Alien Verification of Entitlements program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security.

(b) For weeks of unemployment occurring subsequent to December 31, 1977, benefits may not be paid on the basis of services performed by an alien unless the alien is an individual who has been lawfully admitted for permanent residence at the time the services are performed, is lawfully present for purposes of performing the services, or otherwise is permanently residing in the United States under color of law at the time the services are performed (including an alien who is lawfully present in the United States as a result of the application of the provisions of Section 207, Section 208, or Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1157 through 1158)).

(1) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(2) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of ~~his~~ **the individual's** alien status may be made except upon a preponderance of the evidence.

(3) Any modifications to the provisions of Section 3304(a)(14) of the Federal Unemployment Tax Act, as provided by P.L.94-566, which specify other conditions or other effective date than stated in this section for the denial of benefits based on services performed by aliens and which are required to be implemented under state law as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, shall be considered applicable under this section.

**(c) If an individual who applies for benefits is not a citizen or national of the United States, the department shall verify the lawful presence of the individual to determine the individual's eligibility for benefits through the SAVE program. The department shall implement this subsection in accordance with federal law."**

Page 4, after line 11, begin a new paragraph and insert:

"SECTION 5. IC 22-5-1.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE OCTOBER 1, 2009]:

**Chapter 1.5. Employment of Unauthorized Aliens**

**Sec. 1. (a) This chapter applies only to an employee that an employer hires after September 30, 2009.**

**(b) This chapter does not apply to the following:**

**(1) A public utility (as defined in IC 8-1-2-1(a)) that is subject to regulation by the Indiana utility regulatory commission under IC 8-1-2.**

**(2) A hospital licensed under IC 16-21.**

**(3) A county hospital organized under IC 16-22.**

**(4) A municipal hospital organized under IC 16-23.**

**(5) A nonprofit corporation.**

**(6) A person who operates a business of transporting emergency patients by ambulance or using a nontransporting emergency medical services vehicle (as defined in IC 16-31-3-0.5).**

**(7) A corporation organized under IC 8-1-13.**

**(8) A corporation organized under IC 23-17 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13.**

**Sec. 2. As used in this chapter, "agency" means any state or local administration, agency, authority, board, bureau,**

commission, committee, council, department, division, institution, office, service, or other similar body of government created or established by law that issues a license for purposes of operating a business in Indiana.

Sec. 3. As used in this chapter, "employee" means an individual who:

- (1) works or is hired to work for at least one thousand five hundred (1,500) hours during a twelve (12) month period;
- (2) performs services for an employer; and
- (3) is an individual from whom the employer is required to withhold wages under IC 6-3-4-8 or is an employee described in IC 6-3-4-8(l).

Sec. 4. (a) As used in this chapter, "employer" means a person that:

- (1) transacts business in Indiana;
- (2) has a license issued by an agency; and
- (3) employs one (1) or more individuals who perform employment services in Indiana.

(b) The term includes the state, a political subdivision (as defined in IC 3-5-2-38) of the state, and a self-employed person.

Sec. 5. As used in this chapter, "knowingly" has the meaning set forth in IC 35-41-2-2.

Sec. 6. (a) As used in this chapter, "license" means any agency permit, certificate, approval, registration, charter, or similar authorization that is:

- (1) required by law; and
- (2) issued by an agency;

for purposes of operating a business in Indiana.

(b) The term does not include an occupational or professional license.

Sec. 7. As used in this chapter, "person" means an individual, a corporation, a limited liability company, a partnership, or another legal entity.

Sec. 8. As used in this chapter, "pilot program" means the employment verification pilot program administered by the United States Department of Homeland Security and the Social Security Administration, or the successor of that program.

Sec. 9. As used in this chapter, "unauthorized alien" has the meaning set forth in 8 U.S.C. 1324a(h)(3).

Sec. 10. An employer shall not knowingly employ an unauthorized alien.

Sec. 11. (a) Subject to the availability of funds, the attorney general may investigate a complaint filed with the attorney general that an employer knowingly employed an unauthorized alien in violation of section 10 of this chapter.

(b) In investigating a complaint under subsection (a), the attorney general shall verify the work authorization of the alleged unauthorized alien with the federal government under 8 U.S.C.

1 1373(c).

2 (c) A complaint filed with the attorney general under subsection  
3 (a) must be:

4 (1) in writing; and

5 (2) signed by the individual filing the complaint.

6 Sec. 12. A state, county, or local official or employee may not  
7 attempt to make independently a final determination as to whether  
8 an individual is authorized to work in the United States.

9 Sec. 13. (a) If, after an investigation, the attorney general  
10 determines that an employer has knowingly employed an  
11 unauthorized alien, the attorney general shall notify the United  
12 States Immigration and Customs Enforcement.

13 (b) If the attorney general determines that an employer has  
14 knowingly employed an unauthorized alien and that any defenses  
15 to knowingly employing an unauthorized alien established under  
16 this chapter do not apply, the attorney general may notify:

17 (1) local law enforcement agencies; and

18 (2) the prosecuting attorney in the county in which the  
19 unauthorized alien is employed.

20 The attorney general may not notify law enforcement agencies and  
21 the prosecuting attorney about the unauthorized alien unless the  
22 attorney general determines that the defenses established under  
23 this chapter do not apply.

24 Sec. 14. (a) The prosecuting attorney may bring a civil action for  
25 a violation of section 10 of this chapter against an employer in the  
26 county where the unauthorized alien employee is employed.

27 (b) A prosecuting attorney filing an action under subsection (a)  
28 may file only one (1) action against the employer relating to the  
29 employment of all unauthorized aliens employed by the employer  
30 at the time the prosecuting attorney files the action.

31 (c) A prosecuting attorney may file an additional action against  
32 an employer under this section for a second or subsequent violation  
33 of section 10 of this chapter only for violations allegedly committed  
34 by the employer after the employer receives notice that the  
35 prosecuting attorney has filed the initial action against the  
36 employer under this section.

37 Sec. 15. If a prosecuting attorney files an action under section 14  
38 of this chapter, the court in which the action is filed may hold a  
39 hearing and make a determination of the action on an expedited  
40 basis.

41 Sec. 16. (a) Except as provided in sections 18 and 19 of this  
42 chapter, if a trier of fact determines that an employer knowingly  
43 employed an unauthorized alien in violation of section 10 of this  
44 chapter, the following apply:

45 (1) The court may do the following:

46 (A) Order the employer to terminate the employment of all  
47 unauthorized aliens employed by the employer.

48 (B) Place the employer on probation for a three (3) year

period. During the probationary period, the employer shall file a quarterly report with the attorney general concerning each new individual the employer hires at the specific business location where the unauthorized alien worked.

(C) Order the employer to file a sworn affidavit signed by the employer with the prosecuting attorney within three (3) business days after the order is issued under clause (A).

The affidavit must include a statement that the employer:

(i) has terminated the employment of all unauthorized aliens; and

(ii) will not knowingly employ an unauthorized alien.

(2) The court, after considering the relevant factors listed in subsection (b), may order an agency to suspend, for not more than ten (10) business days, a license described in section 17(a) of this chapter that is held by the employer.

(b) The court may consider the following factors, if applicable, in deciding whether to order an agency to suspend an employer's license under subsection (a)(2):

(1) The number of unauthorized aliens employed by the employer.

(2) Any prior misconduct by the employer.

(3) The degree of harm resulting from the violation.

(4) The extent to which the employer made good faith efforts to comply with any applicable requirements under this chapter.

(5) The duration of the violation.

(6) The role of the directors, officers, or agents of the employer in the violation.

(7) Any other factors the court considers relevant.

Sec. 17. (a) This section applies to all licenses held by an employer:

(1) that are necessary to operate the employer's business at the employer's business location where an unauthorized alien worked; or

(2) if a license is not necessary at the employer's business location described in subdivision (1), that are held by the employer for the employer's primary place of business.

(b) If an employer fails to file a sworn affidavit required under section 16(a)(1)(C) of this chapter with the prosecuting attorney within three (3) business days after the order requiring the filing of the affidavit is issued, the court may order the appropriate agencies to suspend all licenses that are held by the employer. All licenses suspended under this subsection may remain suspended until the employer files a sworn affidavit described under section 16(a)(1)(C) of this chapter with the prosecuting attorney.

(c) If the employer subject to an order filed under subsection (b) files a sworn affidavit required under section 16(a)(1)(C) of this

chapter, the court may order the appropriate agencies to reinstate the employer's suspended licenses.

**Sec. 18. If:**

(1) a trier of fact determines that an employer knowingly employed an unauthorized alien in a second violation of section 10 of this chapter; and

(2) the violation referred to in subdivision (1) occurred not later than ten (10) years after the date of the initial violation; the court may order the appropriate agencies to suspend, for not more than ten (10) business days, all licenses described in section 17(a) of this chapter that are held by the employer.

**Sec. 19. If:**

(1) a trier of fact determines that an employer knowingly employed an unauthorized alien in a third violation of section 10 of this chapter; and

(2) the violation referred to in subdivision (1) occurred not later than ten (10) years after the date of the initial violation; the court may order the appropriate agencies to permanently revoke all licenses held by the employer that are described in section 17(a) of this chapter.

**Sec. 20. (a)** If an agency receives an order from a court under section 16(a)(2), 17(b), or 18 of this chapter, the agency shall immediately suspend the license or licenses described in section 17(a) of this chapter that are held by the employer to which the order relates.

**(b)** If an agency receives an order from a court under section 19 of this chapter, the agency shall immediately revoke the license or licenses described in section 17(a) of this chapter that are held by the employer to which the order relates.

**Sec. 21.** A court shall send copies of all orders issued under sections 16, 17, 18, and 19 of this chapter to the attorney general.

**Sec. 22. (a)** In determining whether an individual is an unauthorized alien for purposes of this chapter, a trier of fact may consider only the federal government's verification or status information provided under 8 U.S.C. 1373(c).

**(b)** The federal government's verification or status information provided under 8 U.S.C. 1373(c) creates a rebuttable presumption of an individual's lawful status.

**(c) The court may:**

(1) take judicial notice of the federal government's verification or status information; and

(2) request the federal government to provide automated or testimonial verification under 8 U.S.C. 1373(c).

**Sec. 23.** A prosecuting attorney may not file an action against an employer under section 14 of this chapter for knowingly employing an unauthorized alien if the employer verified the employment authorization of the employed individual through the pilot program.

1        **Sec. 24. An employer may establish as an affirmative defense**  
 2 **against an alleged violation under section 10 of this chapter that**  
 3 **the employer complied in good faith with the requirements of 8**  
 4 **U.S.C. 1324a(b).**

5        **Sec. 25. The attorney general shall:**

6            (1) **maintain copies of court orders received under section 21**  
 7 **of this chapter;**

8            (2) **make the court orders available on the attorney general's**  
 9 **Internet web site; and**

10          (3) **establish and maintain a data base of the names and**  
 11 **addresses of the employers that have a violation under this**  
 12 **chapter.**

13        **Sec. 26. This chapter does not require an employer to take any**  
 14 **action that the employer believes in good faith would violate**  
 15 **federal law.**

16        **Sec. 27. After September 30, 2009, an employer shall verify the**  
 17 **employment eligibility of each employee of the employer through**  
 18 **the pilot program after hiring the employee.**

19        **Sec. 28. A person who files a complaint with the attorney**  
 20 **general or a prosecuting attorney under this chapter, knowing that**  
 21 **the complaint is false or frivolous, commits a Class B**  
 22 **misdemeanor.**

23        **Sec. 29. The suspension or revocation of a license under this**  
 24 **chapter does not relieve an employer from an obligation to**  
 25 **withhold, collect, or pay income tax on wages paid by the employer**  
 26 **to an employee.**

27        **Sec. 30. This chapter shall be enforced without regard to race or**  
 28 **national origin.**

29        **SECTION 6. IC 22-5-1.7 IS ADDED TO THE INDIANA CODE**  
 30 **AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE**  
 31 **JULY 1, 2008]:**

32        **Chapter 1.7. Public Contract for Services; Unauthorized Aliens**

33        **Sec. 1. As used in this chapter, "contractor" means a person**  
 34 **that has or is attempting to enter into a public contract for services**  
 35 **with a state agency or political subdivision.**

36        **Sec. 2. As used in this chapter, "person" means an individual, a**  
 37 **corporation, a limited liability company, a partnership, or another**  
 38 **legal entity.**

39        **Sec. 3. As used in this chapter, "political subdivision" has the**  
 40 **meaning set forth in IC 36-1-2-13.**

41        **Sec. 4. As used in this chapter, "public contract for services"**  
 42 **means any type of agreement between a state agency or a political**  
 43 **subdivision and a contractor for the procurement of services.**

44        **Sec. 5. As used in this chapter, "state agency" has the meaning**  
 45 **set forth in IC 4-6-3-1.**

46        **Sec. 6. As used in this chapter, "subcontractor" means a person**  
 47 **that:**

48            (1) **is a party to a contract with a contractor; and**



(2) provides services for work the contractor is performing under a public contract for services.

Sec. 7. As used in this chapter, "unauthorized alien" has the meaning set forth in 8 U.S.C. 1324a(h)(3).

Sec. 8. A state agency or political subdivision may not enter into or renew a public contract for services with a contractor if the state agency or political subdivision knows that the contractor or a subcontractor of the contractor employs or contracts with an unauthorized alien.

Sec. 9. Before a state agency or political subdivision may enter into a public contract for services with a contractor, the contractor shall certify in a manner that does not violate federal law that the contractor, at the time of the certification, does not employ or contract with an unauthorized alien.

Sec. 10. (a) A contractor or a subcontractor may not employ or contract with an unauthorized alien.

(b) If a contractor violates this section, the state agency or political subdivision shall require the contractor to remedy the violation not later than thirty (30) days after the date the state agency or political subdivision notifies the contractor of the violation.

Sec. 11. (a) Except as provided in subsection (b), if a contractor fails to remedy a violation within the thirty (30) day period provided under section 10(b) of this chapter, the state agency or political subdivision shall terminate the public contract for services with the contractor for breach of the public contract for services.

(b) If a contractor employs or contracts with an unauthorized alien but the state agency or political subdivision (whichever the contractor has a public contract for services with) determines that terminating the public contract for services under subsection (a) would be detrimental to the public interest or public property, the state agency or political subdivision may allow the public contract for services to remain in effect until the state agency or political subdivision procures a new contractor.

(c) If a state agency or political subdivision terminates a public contract for services under subsection (a), the contractor shall be liable to the state agency or political subdivision for actual damages.

Sec. 12. A contractor may file an action with a circuit or superior court having jurisdiction in the county to challenge:

(1) a notice of a violation to the contractor under section 10(b) of this chapter not later than twenty (20) days after the contractor receives the notice; or

(2) a termination of a public contract for services under section 11(a) of this chapter not later than twenty (20) days after the state agency or political subdivision terminates the public contract for services with the contractor.

Sec. 13. If a contractor uses a subcontractor, the subcontractor

1 shall certify to the contractor in a manner that does not violate  
 2 federal law that the subcontractor, at the time of certification, does  
 3 not employ or contract with an unauthorized alien.

4 **Sec. 14.** A contractor shall maintain on file a certification of a  
 5 subcontractor under section 13 of this chapter throughout the  
 6 duration of the term of a contract with the subcontractor.

7 **Sec. 15. (a)** If a contractor determines that a subcontractor is in  
 8 violation of this chapter, the contractor may terminate a contract  
 9 with the subcontractor for the violation.

10 **(b)** A contract terminated under subsection (a) for a violation of  
 11 this chapter by a subcontractor may not be considered a breach of  
 12 contract by the contractor or the subcontractor.

13 **(c)** A subcontractor may file an action with a circuit or superior  
 14 court having jurisdiction in the county to challenge a termination  
 15 of a contract under subsection (a) not later than twenty (20) days  
 16 after the contractor terminates the contract with the  
 17 subcontractor.

18 SECTION 7. IC 34-30-2-87.3 IS ADDED TO THE INDIANA  
 19 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 20 [EFFECTIVE OCTOBER 1, 2009]: **Sec. 87.3. IC 22-5-1.5-23**  
 21 **(Concerning certain employers that employ unauthorized aliens).**

22 SECTION 8. IC 35-44-5 IS ADDED TO THE INDIANA CODE AS  
 23 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
 24 1, 2008]:

25 **Chapter 5. Offenses Relating to Illegal Aliens**

26 **Sec. 1.** This chapter does not apply to the following:

- 27 **(1)** A church or religious organization.
- 28 **(2)** The provision of assistance for health care items and  
 29 services that are necessary for the treatment of an emergency  
 30 medical condition of an individual.
- 31 **(3)** A health care provider (as defined in IC 16-18-2-163(a))  
 32 that is providing health care services.
- 33 **(4)** An attorney or other person that is providing legal  
 34 services.
- 35 **(5)** A person who:
  - 36 **(A)** is a spouse of an alien or who stands in relation of  
 37 parent or child to an alien; and
  - 38 **(B)** would otherwise commit an offense under this chapter  
 39 with respect to the alien.

40 **Sec. 2.** As used in this chapter, "alien" has the meaning set forth  
 41 in 8 U.S.C. 1101(a).

42 **Sec. 3.** As used in this chapter, "federal immigration agency"  
 43 means an agency of the federal government responsible for the  
 44 determination of the immigration status of aliens present in the  
 45 United States.

46 **Sec. 4.** Except as provided in section 6 of this chapter, a person  
 47 who:

- 48 **(1)** transports; or

1           (2) moves;  
 2       an alien, for the purpose of commercial advantage or private  
 3       financial gain, knowing or in reckless disregard of the fact that the  
 4       alien has come to, entered, or remained in the United States in  
 5       violation of law commits transporting an illegal alien, a Class A  
 6       misdemeanor.

7       Sec. 5. Except as provided in section 6 of this chapter, a person  
 8       who:

9           (1) conceals;  
 10          (2) harbors; or  
 11          (3) shields from detection;  
 12       an alien in any place, including a building or means of  
 13       transportation, for the purpose of commercial advantage or  
 14       private financial gain, knowing or in reckless disregard of the fact  
 15       that the alien has come to, entered, or remained in the United  
 16       States in violation of law commits harboring an illegal alien, a  
 17       Class A misdemeanor.

18       Sec. 6. (a) Except as provided under subsection (b), an offense  
 19       under section 4 or 5 of this chapter is a Class D felony if the:

20           (1) person has a prior unrelated conviction under section 4 or  
 21           5 of this chapter; or  
 22           (2) offense involved more than five (5) aliens.

23       (b) The offense is a Class C felony if the person has a prior  
 24       unrelated conviction under this section.

25       Sec. 7. A determination by a federal immigration agency that an  
 26       alien has come to, entered, or remained in the United States in  
 27       violation of law creates a rebuttable presumption that the alien is  
 28       in the United States in violation of law.

29       SECTION 9. [EFFECTIVE OCTOBER 1, 2009] A prosecuting  
 30       attorney may file an action against an employer under  
 31       IC 22-5-1.5-14, as added by this act, only for a violation of  
 32       IC 22-5-1.5-10, as added by this act, that occurs after September  
 33       30, 2009.

34       SECTION 10. [EFFECTIVE JULY 1, 2008] IC 35-44-5-4 and  
 35       IC 35-44-5-5, both as added by this act, apply only to crimes  
 36       committed after June 30, 2008.

37       SECTION 11. [EFFECTIVE JULY 1, 2008] (a) The attorney

- 1       **general may request funding to implement IC 22-5-1.5-11, as added**
- 2       **by this act, in the next biennial budget submission.**
- 3       **(b) This SECTION expires July 1, 2012."**  
          (Reference is to EHB 1219 as printed February 22, 2008.)

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Senator DELPH